

1 XAVIER BECERRA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 PATRICIA WEBBER HEIM
Deputy Attorney General
4 State Bar No. 230889
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7519
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE CEMETERY AND FUNERAL BUREAU**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. A1 2018 32

14
15 **WESTWOOD HILLS MEMORIAL PARK**
2720 Cold Springs Road,
16 Placerville, CA 95667

A C C U S A T I O N

17 Certificate of Authority License No. COA 135

18 Respondent.

19
20
21 Complainant alleges:

22 **PARTIES**

23 1. Lisa M. Moore (Complainant) brings this Accusation solely in her official capacity as
24 the Bureau Chief of the Cemetery and Funeral Bureau (Bureau), Department of Consumer
25 Affairs.

26 2. On or about May 1, 1950, the Bureau issued Certificate of Authority License No.
27 COA 135 to Westwood Hills Memorial Park (Respondent). The Certificate of Authority License
28

1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 January 1, 2019, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Director of the Department of Consumer
5 Affairs (Director) for the Bureau, under the authority of the following laws. All section
6 references are to the Business and Professions Code (Code) unless otherwise indicated.

7 4. Section 7686 of the Code states, in pertinent part, that the Bureau may suspend or
8 revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found
9 guilty by the Bureau of any of the acts or omissions constituting grounds for disciplinary action.
10 The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of
11 Division 3 of Title 2 of the Government Code, and the Bureau shall have all the powers granted
12 therein.

13 5. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,
14 or cancellation of a license shall not deprive the Director of jurisdiction to proceed with a
15 disciplinary action during the period within which the license may be renewed, restored, reissued,
16 or reinstated.

17 STATUTORY PROVISIONS

18 6. Code section 119 states, in pertinent part:

19 Any person who does any of the following is guilty of a misdemeanor:

20 (a) Displays or causes or permits to be displayed or has in his or her possession either
21 of the following:

22 (1) A canceled, revoked, suspended, or fraudulently altered license.

23 (2) A fictitious license or any document simulating a license or purporting to be or
24 have been issued as a license.

25 7. Code section 7637.1 states:

26 A person shall not engage in the business of, act in the capacity of, or advertise or
27 assume to act as, a cemetery broker or cemetery salesperson in this state without first
28 obtaining a license from the bureau.

8. Code section 7653.6 states, in pertinent part:

1 A cemetery licensed under this chapter shall at all times employ a licensed cemetery
2 manager to manage, supervise, and direct its operations. Notwithstanding any other
3 provision of this chapter, licensed cemeteries within close geographical proximity of
each other may request the bureau to allow a licensed cemetery manager to manage,
supervise, and direct the business or profession of more than one facility.

4 (a) Every cemetery shall designate a licensed cemetery manager to manage the
5 cemetery, and shall report the designation to the bureau within 10 days of the
6 effective date. Any change in the designated manager shall be reported to the bureau
within 10 days.

7 9. Code section 7685.5 states:

8 (a) The bureau shall make available to funeral establishments and cemetery
9 authorities a copy of a consumer guide for funeral and cemetery purchases for
10 purposes of reproduction and distribution. The funeral and cemetery guide that is
11 approved by the bureau, in consultation with the funeral and cemetery industries and
any other interested parties, shall be made available in printed form and electronically
through the Internet.

12 (b) A licensee shall prominently display and make available to any individual who, in
13 person, inquires about funeral or cemetery purchases, a copy of the consumer guide
for funeral and cemetery purchases, reproduced as specified in subdivision (a).

14 (c) Prior to the drafting of a contract for services, the licensee shall provide, for
15 retention, the consumer with a copy of the consumer guide for funeral and cemetery
16 purchases described in subdivisions (a) and (b).

17 10. Section 7711.1 of the Code states, in pertinent part:

18 Unprofessional conduct by any licensee or registrant or by any agent or employee of a
19 licensee or registrant constitutes grounds for disciplinary action. Unprofessional
conduct includes, but is not limited to, the following:

20 (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
21 the violation of this chapter and any regulation adopted thereunder, or of any federal
22 or state law or regulation governing the disposition of human remains, operation of
cemeteries or crematories, the sale of cemetery property, or the sale of crematory
services or commodities.

23 11. Section 7711.2 states, in pertinent part:

24 The bureau may, upon its own motion, and shall, upon the verified complaint in
25 writing of any person, investigate the actions of any person engaged in the business or
26 acting in the capacity of a cemetery licensee, and may temporarily suspend or
permanently revoke a license at any time where the licensee, within the immediately
27 preceding three years, while a cemetery licensee in performing or attempting to
perform any of the acts specified in this act, has been guilty of any of the following:

28 (a) Making any substantial misrepresentation.

....
(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) The misrepresentations and false statements mentioned in this section also include misrepresentation and false statements as to other property than that which the cemetery licensee may be selling or attempting to sell.

12. Health and Safety Code Section 7111 states, in pertinent part:

A cemetery authority or crematory may make an interment or cremation of any remains upon the receipt of a written authorization of a person representing himself or herself to be a person having the right to control the disposition of the remains pursuant to Section 7100.

13. Health and Safety Code Section 8277 states, in pertinent part:

Every contract of a cemetery authority, including contracts executed in behalf thereof by a cemetery broker or salesperson, which provides for the sale by the cemetery authority of an interment plot or any service or merchandise, shall be in writing and shall contain all of the agreements of the parties.

14. Health and Safety Code Section 8585(a) states:

Whenever ownership of any cemetery authority is proposed to be transferred, the cemetery authority shall notify the Cemetery and Funeral Bureau in the Department of Consumer Affairs. A change in ownership, for purposes of this section, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a cemetery authority is transferred in a single transaction or in a related series of transactions to one or more persons, associations, or corporations. The notice shall specify the address of the principal offices of the cemetery authority, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the maximum amount of twenty-five thousand dollars (\$25,000). An action for a civil penalty under this provision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16 (CCR), section 2326.3 states, in pertinent part:

....

(c) Change of corporate officers, limited liability company members, or trustees of the endowment care fund, including change of name and/or address of any individual previously reported to the bureau, shall be reported within thirty (30) days of the change on bureau form 23-NC (1/16), Cemetery Notification of Change, which is hereby incorporated by reference, along with a filing fee of twenty-five dollars (\$25).

1 (d) Addition of corporate officers, limited liability company members, or trustees of
2 the endowment care fund shall be submitted on bureau form 23-NC (1/16), Cemetery
3 Notification of Change, which is hereby incorporated by reference, accompanied by
4 bureau form 16-CA (rev. 1/16), Certification Affidavit, which is hereby incorporated
5 by reference, for each person along with a filing fee of twenty-five dollars (\$25).

6 (e) A limited liability company shall notify the bureau within thirty (30) days of
7 employing a bureau licensed employee or upon the resignation or termination of a
8 bureau licensed employee on bureau form 23-LE (1/16), Bureau Licensed Employee,
9 which is hereby incorporated by reference.

10 16. CCR section 2337 states:

11 (a) Signs.

12 (1) Entrance Signs. Each nonendowment care cemetery shall post a sign at each
13 entrance. These signs shall be at least sixteen inches (16") high and twenty-four
14 inches (24") wide and shall be prominently mounted upright thus being perpendicular
15 to level ground. Each sign shall contain the following:

16 (A) A heading containing the words "NONENDOWMENT CARE" in black lettering
17 at least four inches high.

18 (B) The phrase "This is a nonendowment care interment property" in black lettering
19 at least one and one-quarter inches (1 1/4") height.

20 (2) Office Signs. Each nonendowment care cemetery shall post a sign in the office or
21 offices where sales are conducted. These signs shall be at least eight inches (8") high
22 and twelve inches (12") wide and shall contain the following:

23 (A) A heading containing the words "NONENDOWMENT CARE" in black lettering
24 at least two inches (2") high.

25 (B) The phrase "This is a nonendowment care interment property" in black lettering
26 at least three-fourths inch (3/4") high.

27 (b) Contracts, Literature, Etc. There shall be printed at the head of all contracts,
28 literature, publications, etc., of nonendowment care cemeteries the following phrase:

"This institution is operated as a 'NONENDOWMENT CARE' Interment Property."

The lettering shall appear in a minimum of 10-point type and the words
"NONENDOWMENT CARE" shall be in capital letters.

COST RECOVERY

17. Code section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

FACTUAL ALLEGATIONS

18. On or about September 25, 2017, the Bureau received a complaint that Respondent owner died in April 2017, and a new manager had not been appointed.

19. On or around January 3, 2018, Respondent staff continued to post the cemetery manager license of the decedent, and the original Certificate of Authority License, which listed the decedent.

20. In or around February 2018, the Bureau received an additional complaint that similarly alleged that a new manager for Respondent had not been appointed, and Respondent was operating without proper licenses.

21. During a Bureau investigation in February and March 2018, a Bureau investigator discovered the following:

i. Respondent had removed the non-endowment care sign previously posted at the entrance of the cemetery;

ii. The staff selling property were all confirmed not to have licenses with the Bureau;

iii. The licensed decedent's information was posted, and decedent was listed as a manager;

iv. Price lists failed to contain the Nonendowment Care Disclosure;

v. The Bureau's current *Consumer Guide to Funeral & Cemetery Purchases* was not available for customer review and use;

vi. A random sample of files showed that deeds contained the stamped signature of the decedent, or were unsigned.

vii. Respondent failed to obtain interment authorizations in four previous inspections in 2006, 2010, 2013, and 2018, and continued to do so as of February 28, 2018.

22. During their investigation, the Bureau investigator also discovered that as early as September 2017, Respondent was served notice of their non-compliance with the law. A citation for non-compliance was issued to Respondent on November 13, 2017, and the Bureau provided another notice of non-compliance to Respondent on December 27, 2017.

///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Engaging in the Improper Execution of Contracts)**

3 27. Respondent is subject to disciplinary action under Health and Safety Code section
4 8277, by and through Code section 7711.1(a), for unprofessional conduct, in that Respondent
5 engaged in the improper execution of contracts, as more particularly set forth in paragraphs 18-
6 22.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Have Proper Authorization for Interment)**

9 28. Respondent is subject to disciplinary action under Health and Safety Code section
10 7111, by and through Code section 7711.1(a), for unprofessional conduct, in that in or around
11 February 2018, Respondent's employees failed to get proper signature/authorization for
12 interment, as required pursuant to Code section 7100.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Properly Display Consumer Guide)**

15 29. Respondent is subject to disciplinary action under Code section 7685.5(b), by and
16 through Code section 7711.1(a), for unprofessional conduct, in that in or around February 2018,
17 Respondent failed to have the Bureau's current *Consumer Guide to Funeral & Cemetery*
18 *Purchases* available to consumers, as more particularly set forth in paragraph 21.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Failing to Provide Consumers with Copy of Consumer Guide)**

21 30. Respondent is subject to disciplinary action under Code section 7685.5(c), by and
22 through Code section 7711.1(a), for unprofessional conduct, in that in or around April 2017, and
23 continuing to date, Respondent has failed to provide consumers with a copy of the *Consumer*
24 *Guide to Funeral & Cemetery Purchases*, as more particularly set forth in paragraphs 18-22.

25 ///

26 ///

27 ///

28 ///

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Failure to Include the Nonendowment Care Disclosure)**

3 31 Respondent is subject to disciplinary action under CCR section 2337(b), by and
4 through Code section 7711.1(a), for unprofessional conduct, in that Respondent failed to include
5 the Nonendowment Care Disclosure on its price lists, as more particularly set forth in paragraph
6 21.

7 **TENTH CAUSE FOR DISCIPLINE**

8 **(Display or Possession of a Canceled, Revoked, Suspended,
9 or Fraudulently Altered License)**

10 32. Respondent is subject to disciplinary action under Code section 119(a), by and
11 through Code section 7711.1(a), for unprofessional conduct, in that Respondent staff displayed or
12 caused permits to be displayed, or had in his or her possession a canceled, revoked, suspended, or
13 fraudulently altered license, as more particularly set forth in paragraphs 18-22.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Director of Consumer Affairs issue a decision:

17 33. Revoking Certificate of Authority License No. COA 135, issued to Westwood Hills
18 Memorial Park;

19 34. Ordering Westwood Hills Memorial Park to pay the Cemetery and Funeral Bureau
20 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3; and,

22 35. Taking such other and further action as deemed necessary and proper.

23
24 DATED: November 29, 2015 Lisa M. Moore

25 LISA M. MOORE
26 Bureau Chief
27 Cemetery and Funeral Bureau
28 Department of Consumer Affairs
State of California
Complainant

SA2018101997
13346065.docx